

John A. Elardo, Esq., #015043
Michael A. Rossi, Esq., #018897
ELARDO, BRAGG & ROSSI, P.C.
3001 East Camelback Road, Suite 130
Phoenix, Arizona 85016
(602) 889-0272 File No.: 43-097
Minute Entries: court@ebarlaw.com
E-mail: mrossi@ebarlaw.com
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GARY NERDIG and JOYCE NERDIG,
husband and wife,

Plaintiffs,

vs.

ELECTRIC INSURANCE COMPANY, a
Massachusetts corporation,

Defendant.

Case No.:

**NOTICE OF REMOVAL OF CIVIL
ACTION**

(Maricopa County Superior Court Case
No.: CV2017-007100)

Defendant Electric Insurance Company gives notice that it is removing this action from Maricopa County Superior Court to the United States District Court for the District of Arizona pursuant to Rule 28 of the U.S.C. §§ 1332, 1441 and 1446 for the following reasons:

**A. THIS COURT HAS DIVERSITY JURISDICTION PURSUANT TO
28 U.S.C. § 1332.**

1. There is complete diversity among the legitimate parties.

(a) Plaintiffs are residents and citizen of the state of Arizona. (Ex. 1, p. 1, at ¶ 1, Plaintiffs' Complaint in Superior Court of Arizona, Maricopa County, Case No. CV2017-007100).

(b) Defendant Electric Insurance Company (“Electric”) is a Massachusetts corporation with its principal place of business in Beverly, Massachusetts.

2. The Amount in Controversy Exceeds \$75,000.

The determination of diversity jurisdiction is made as of the time of removal. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *see also Rogers v. Wall-Mart Stores, Inc.* 230 F.3d 868, 871 (6th Cir. 2000). Included in the calculation of the jurisdictional minimum are general damages, special damages, punitive damages, and attorneys’ fees. *See Ansley v. Metropolitan Life Ins. Co.*, 215 F.R.D. 575 (D. Ariz. 2003); *see also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 1998); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998). Electric Insurance Company was served and there is complete diversity among the parties.

Further, Plaintiffs allege that they are seeking at least \$250,000 in damages, (see Ex. 1, Plaintiff’s Complaint at Page 11), Rule 28 of the U.S.C. § 1446(c)(2). Therefore, the amount in controversy exceeds the \$75,000 jurisdictional amount required for removal based on diversity as required by Rule 28 of the U.S.C. § 1332(a).

B. This Notice of Removal is Timely.

Plaintiffs filed the Complaint on May 15, 2017 and served Electric through the Arizona Department of Insurance on June 1, 2017. This Notice of Removal, therefore, has been timely filed within 30 days of that date. *See* 28 U.S.C. § 1446(b).

1 C. Electric has attached copies of the original Complaint, Certificate of
2 Arbitration, and Summons and has no other court documents in its possession (*see* Ex.
3 1, 2, and 3, respectively).

4 D. Electric has concurrently filed a copy of this notice with the Arizona
5 Superior Court.

6 E. Electric has served upon Plaintiffs a copy of this notice.

7
8 Dated this 15th day of June, 2017.

9 **ELARDO, BRAGG & ROSSI, P.C.**

10
11 By /s/ Michael A. Rossi, Esq.
12 Michael A. Rossi, Esq.
13 John A. Elardo, Esq.
14 3001 East Camelback Road, Suite 130
15 Phoenix, Arizona 85016
16 Attorneys for Defendant

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on June 15th, 2017, I electronically transmitted the attached
19 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
20 Notice of Electronic Filing to the following CM/ECF Registrants:

21 Milton W. Hathaway, Jr., Esq.
22 **MURPHY, SCHMITT, HATHAWAY & WILSON, P.L.L.C.**
23 325 West Gurley Street, Suite 102
24 P.O. Box 591
25 Prescott, Arizona 86302-0591
26 (928) 445-6860
 Attorneys for Plaintiffs

/s/ Kelsey Slocum